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Supreme Court, U.S.
FILED

No. 961875 MAR 10 1997

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

OTTIE HOOKER

Petitioner,

V.

PRODUCERS TRACTOR COMPANY, et al

Respondent.

Petition For Writ Of Certiorari To The
Arkansas Supreme Court for the Sixth Judicial Circuit

PETITION FOR WRIT OF CERTIORARI

Ottie Hooker
Route 2, Box 100
Palestine, AR 72372
(501) 581-2436

In propria persona

22 pp

QUESTIONS PRESENTED

1. This Court should grant the Petition to resolve the Constitutional question, arising under this USA Constitution, Article III § 2 as this Petitioner was not granted his guaranteed and secured USA Constitutional Right to trial by jury nor did the trial court fulfill its obligation and duty to afford a trial by jury to this Petitioner.

2. This Court should grant the Petition to resolve the Federal Constitutional question of the conflict with applicable decisions of this court as to call for an exercise of the Court's power of supervision.

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OPINION BELOW

The unpublished written decision of the Arkansas Supreme Court appears in Appendix page App. 1 of this Petition and the said denial of Petitioner's Petition for REHEARING EN BANC appears in Appendix page App. 2; the written decision of the trial court the St. Francis County Chancery Court, First Judicial Circuit, to sequester equipment and directing Sheriff to take possession, appears in Appendix page App. 3; the written decision of the trial court filed the 18th day of April, 1996 appears in Appendix page App. 5.

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JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to the U.S.A. Constitution Article III § 1 and 2; Rules of the Supreme Court of the United States Rule 10.1 (a)(c); Title 28 USC § 1254 (1).

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CONSTITUTIONAL PROVISIONS

U.S.A. Constitution, Bill of Rights, Article VII.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."

STATEMENT OF THE CASE

Petitioner, Ottie Hooker, respectfully request that a Writ of Certiorari issue to review the decision of the Arkansas Supreme Court for the Sixth Judicial Circuit wherein the said Court dismissed Ottie Hooker's Appeal thereto, see Appendix page App. 1; this Petitioner filed for a Petition To ReHear En Banc which was denied, see Appendix page App. 2; the trial court the Chancery Court of St. Francis County, Arkansas, for the First Judicial Circuit of Arkansas, entered an Order allowing Sequestration of Equipment Directing Sheriff to take possession, and Vacating Scheduling Order (TR-III-43) entered May 2, 1996, see Appendix page App.

3; the written decision of the trial court denying numerous Constitutional Rights including Petitioner's U.S.A. Constitution, Bill of Rights, Art. VII [right to trial by jury *"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."* which was denied and the Order thereof filed on the 18th day of April, 1996, see Appendix page App. 5.

1. This Court should grant the Petition to resolve the Constitutional question arising under this USA Constitution, USA Constitution Article III § 2 as this Petitioner was not granted his guaranteed and secured USA Constitutional Right to trial by Jury nor did the trial Court fulfill its Obligation and Duty to afford a trial by Jury to this Petitioner.

Petitioner herein filed a civil complaint against Producers Tractor Company therein demanding a Common-law trial by Jury. As this case progressed the trial court issued an Order allowing Sequestration of Petitioner's farming equipment and directing the Sheriff to take possession thereof, thereafter dismissing my civil complaint and denying my said Constitutional Right to a Common-law trial by Jury.

2. The Court should grant the Petition to resolve the Federal question of the conflict with applicable decisions of this Court as to call for an exercise of the Court's power of supervision.

As this United States Supreme Court has applied the applicable decisions as to the USA Constitution, Bill of Rights, Art. VII in the following cases:

That the Bill of Rights, the Seventh Amendment is bound upon the State of Arkansas by and the Contract Clause of the [USA] Constitution and the Due Process Clause of the [Bill of Rights] Fourteenth Amendment, PENNSYLVANIA COAL COMPANY V MAHON et al, 260 US 393, 413 (1922).

The USA Constitution is the Supreme Law of the Land and:

"that a law repugnant to the Constitution is void and that Courts as well as other departments are bound by that instrument." MARBURY V MADISON, 5 U.S. 391 (1803).

"Where Rights secured by the [USA] Constitution are involved there can be no rule making or legislation which would abrogate them," MARINDA V ARIZONA, 384 U.S. 491 (1966.

The MAGNA CARTA OF 1215 guarantees a

Common-law Jury and is one of the most important documents supporting our Federal [USA] and State Constitutions.

Even this USA Supreme Court in the case of the STATE OF GEORGIA vs. BRAILSFORD et al. 3 Dall. 1, conducted a Jury Trial as a Jury Trial is a guaranteed and secured Constitutional Right.

The Trial Court in this case had an Obligation and Duty to secure the Substantive Rights of the Petitioner Ottie Hooker to afford him a Jury Trial as *"in suits at common-law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,"* [the value in controversy in this case far exceeded twenty dollars], thus the Trial Court possessed a Duty and an Obligation under BOYD DOCTRINE.

"It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizen and against any stealthy encroachments thereon." BOYD v. U.S., 116 US 635 (1886).

The Trial Court erred in allowing this Petitioner his demanded Constitutional Right to a Common-law Trial by Jury thus this U.S.A. Supreme Court should grant the Petition to resolve the Federal question of

the conflict with applicable decisions of this Court, cited herein, as to call for an exercise of this Court's power of supervision.

THE PROCEEDINGS BELOW

Petitoner appealed the Summary Order from the Trial Court which denied him his Constitutional Right and his Substantive Right to a Common-law trial by Jury, and summarily dismissed his complaint without a demanded trial by Jury and subsequently [seized] sequestratored Petitioner's framing equipment leaving Petitioner without the means to feed his family. App. 3

The Appeal to the Arkansas Supreme Court was dismissed after this Appellant's Brief was filed, App. 1.

Petitioner filed a Petition for En Banc Hearing which was denied, App. 2.

The Trial Court the Chancery Court of St. Francis County, Arkansas, denied this Petitioner his fundamental secured and guaranteed Constitutional Right and Substantive Right to a demanded Common-law trial by Jury of which the trial court possessed an Obligation and a Duty to pro-

vide, App. 5.

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REASONS FOR GRANTING WRIT

This supreme Court should grant this Petition to resolve the Federal Constitutional question arising under this USA Constitution USA CONSTITUTION ART. III § 2, i.e. Petitioner's BILL OF RIGHTS, SEVENTH AMENDMENT Right to a Common-law trial by Jury,"*In suits a common-law, where the value in controversy shall exceed twenty dollars,*" whis is bound upon the State of Arkansas by and through the FOURTEENTH AMENDMENT, and as the Trial Court's decision and the Arkansas Supreme Court's decisions are in conflict with the applicable decisions of this Supreme Court and the USA CONSTITUTION THE SEVENTH AMENDMENT.

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CONCLUSION

For the foregoing reasons, the Petitioner respectfully request this Honorable

Court to grant this Petition.

Date: March 7, 1997

Respectfully submitted
without prejudice,

Ottie Hooker

Ottie Hooker
Route 2, Box 100
Palestine, AR 72372
(501) 581-2436

In propria persona

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LAW OR CHANCERY MANDATE

State of Arkansas,)
) SCT.
In the Supreme Court)

BE IT REMEMBERED, That at a session of the Supreme Court of the State of Arkansas, begun and held in the City of Little Rock, on the 4th day of November, 1996, amongst others were the following proceedings, to-wit:

NO. 96 00851

OTTIE HOOKER

Appellant(s)

vs. Appeal From St. Francis Chancery

PRODUCERS TRACTOR COMPANY

Appellee(s)

Motion of Appellee Producers Tractor Company, Inc. to dismiss appeal is granted. Appeal dimissed. Newbern, J., not participating. Appellee's motion to stay briefing schedule. Moot.

IN TESTIMONY, That the above is true copy of the order of said Supreme Court, rendered in the case herein stated, I, Leslie W.Steen, Clerk of said Supreme Court, hereunto set my hand and affix the seal of said Supreme Court, at my office in the city of Little Rock, this 4th day of November, 1996.

/s/ Leslie W. Steen
Clerk

Original to Clerk
CC: Ottie Hooker
Hon. Kathleen Bell
Ralph W. Waddell

Filed: Nov. 6, 1996
Bette S. Green, Clerk
ST. FRANCIS COUNTY

Office of the Clerk
Supreme Court of the State Of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rocke, Arkansas 72201

Leslie W. Steen, Clerk

December 9, 1996

Ottie Hooker
Rt. 1, Bos 100
Palestine, AR 72372

RE: 96 00851 OTTIE HOOKER v.
PRODUCERS TRACTOR COMPANY

Dear Mr. Hooker,

The Arkansas Supreme Court made the following order today in the above styled case:

"Pro se petition for en banc hearing is denied. Newbern, J., not participating."

Sincerely,

/s/ Leslie W. Steen,
Clerk

LWS:rh
cc: James R. VanDover
Ralph W. Waddell
Hon. Kathleen Bell

ORDER ALLOWING SEQUESTRATION OF EQUIPMENT DIRECTING SHERIFF TO TAKE POSSESSION, AND VACATING SCHEDULING ORDER (TR-III-431)
(entered May 2, 1996)

Nothwithstanding David Hooker's verbal protests that appellant was too ill to appear, on April 18, 1996, several motions filed by Producers were heard by the Chancellor. An earlier hearing on the same motions had been continued because of appellant's illness.

At the end of the hearing, the Chancellor found that bankruptcy court's Agreed Order, entered June 9, 1994, is entitled to full faith and credit; that, even if appellant were present, he could not contradict the validity of that Agreed Order; that paragraph 9 of the Agreed Order is unambiguous; that the parties prior conduct demonstrates their inability to agree upon a supplemental adequate protection amount; Producers is entitled to have possession of the equipment and to store it with Nash Applicators in Brinkley, Arkansas, pending further orders; and the scheduled May 3 hearing on the merits of the parties' claims should be continued pending further orders.

The Sheriff is directed to take the

equipment from appellant's possession and store it on the Brinkley, Arkansas, premises of Nash Applicators.

/s/ Kathleen Bell, Chancellor

(seal)
KATHLEEN BELL
Chancery and Probate Judge
FIRST JUDICIAL CIRCUIT
OF ARKANSAS

P.O. Box 3588
West Memphis, AR 72390

April 17, 1996

Mr. Ottie Hooker
Route 2, Box 100
Palestine, Arkansas

Filed: Apr 18, 1996
Bette S Green,Clerk
ST.FRANCIS COUNTY

Mr. James R. VanDover
Post Office Box 646
Marianna, Arkansas

RE: Ottie Hooker v Producers Tractor Company, et al, St Francis County Case No. E-94-104

Gentlemen

A hearing is now scheduled for May 3, 1996, on the defendant's Motion to Terminate the Temporary Restraining Order now in place. A number of motions have been filed in this action which require resolution prior to this hearing date.

The plaintiff's motions, filed pro se, and their date of fillings are as follows:

1. Demand for Common Law Jury trial, Feb. 20, 1996
2. Petition to Dismiss James R. VanDover as Attorney For the Defendant, Feb 29,
3. Petition for Expenses and Sanctions Against VanDover, March 15,
4. Notice and Demand for Common Law Jury, March 15, April 9,

5. Notice of Durable Power of Attorney, March 15, and
6. Petition to Exclude the Participation of VanDover, March 21,
8. Petition to Compel Production of Documents, March 22 and
9. Notice and Demand that This Court not Deny Plaintiff Assistance of Counsel of choice that may not be a bar lawyer, March 26.

The defendant herein has filed the following motions:

1. Motion for Rule 11 Sanctions, March 8
2. Motion to Preclude participation of three named individuals, March 12 and
3. Contingent Motion to Compel Plaintiff to surrender or sequester farming equipment, March 22

Briefs in support of the motions and responses have been submitted by both parties. The Court is aware of the scheduling order of March 14, which allows for the filing of motions until April 22. The parties shall be allowed until that date for the submission of other issues, not ruled on here. Copies of all filed motions and responses should be forwarded to me in order that a decision may be reached prior to Mar 3.

The motions of the plaintiff shall be discussed first, in the order of filing.

A. DEMAND FOR COMMON LAW JURY TRIAL

The plaintiffs filed this complaint in equity, invoking the jurisdiction of this court, requesting that the defendant be restrained from selling certain farm equip-

ment. Since the filing of the petition, the plaintiff has demanded a jury trial. The constitutional right to a jury trial in an equity case has been previously settled by the Arkansas Supreme Court. In Jones v Reed, 267 Ark 237 (1979), the Court stated

> The constitutional right to trial by jury does not secure the right in all possible instances, but only in those cases in which it existed when our constitution was framed, it extends only to trial of issues of fact in civil and criminal cases . . .

See also Civil Service Commission v. Matlock, 205 Ark. 286 and Colclasure v. Kansas City Life Insurance Company, 290 Ark. 585 (1986).

The plaintiff's demands for jury trial filed February 20, March 15 and April 9 are all denied.

B.PETITION FOR DISMISSAL OF DEFENDANT'S COUNSEL

The plaintiff request that James VanDover be removed as counsel for the defendant. The plaintiff also request this court recuse itself due to membership in the Bar Association with VanDover.

While the Court and VanDover are both licensed by the State, this fact standing along, is not grounds for recusal of the Court. The fact VanDover is so licensed is not sufficient grounds for removal as the chosen counsel for the defendant. The plaintiff's petitions on this issue, filed February 29 and March 21, are denied.

C.MOTION FOR RULE 11 SANCTIONS

Both parties have filed motions for the imposition of sanctions. A reviews of these motions reveal they cannot be ruled on without the arguments of the parties. Resolution of these motions shall be held in abeyance pending the hearing on the merits.

D. DURABLE POWER OF ATTORNEY

The plaintiff executed and caused to be filed, on February 20, A Durable Power of Attorney. The plaintiff has given David O. Hooker, Bill Cockrell and Chris Parker the authority to act on his behalf. On March 15, the plaintiff then filed a pleading captioned "Notice of Durable Power of Attorney to be Heard On March 28, 1996 and Memorandum of Law." The plaintiff is here requesting these parties be allowed to act as his counsel in this action.

Only an individual licensed by the State is authorized to practice law. If there is to be any deviation from this requirement for the individuals named by the plaintiff, such a deviation must be authorized by the Arkansas Supreme Court. This trial court certainly does not have the authority to authorize unlicensed people to practice law. The plaintiff's petition of March 26 is denied.

E. PETITION TO COMPEL

The plaintiff's petition to compel is moot. The defendant's responses were filed March 22. The plaintiff contends the responses were not adequate. This petition to compel was filed April 12. The defendant has not responded as of this date. Therefore,

this petition will not be addressed at this time.

Two motions of the defendant have previously been addressed. The Motion for Sanctions will be addressed at a later hearing. The motion to preclude participation is made moot by the ruling in paragraph D of this Letter. The last motion, by Order of Judge Story, is to be presented on April 18.

If I have failed to address any pending issues, inform me of the fact. Mr. VanDover shall prepare the precedent He shall send the original to the Court, with a copy to Mr. Hooker. If Mr. Hooker has any objections to the form, he shall contact the Court in writing, with copy to Mr. VanDover, within 10 days of receipt. If there are no objections received in that time, the proposed precedent will be executed and filed.

/s/Kathleen Bell
KATHLEEN BELL
CHANCELLOR